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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/997,036	11/27/2001	Daniel Y. Abramovitch	10970174-4	3511

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INTELLECTUAL PROPERTY ADMINISTRATION  
FORT COLLINS, CO 80527-2400

EXAMINER
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TRAN, THANG V

ART UNIT	PAPER NUMBER
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2627

NOTIFICATION DATE	DELIVERY MODE
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06/11/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 09/997,036	<b>Applicant(s)</b> ABRAMOVITCH ET AL.	
	<b>Examiner</b> Thang V. Tran	<b>Art Unit</b> 2627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 11/07/08 & 5/20/09.
- 2a) ☐ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-109 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-109 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

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The communication dated 05/20/09 and 11/07/08 have been considered with the following results:

***Oath/Declaration***

1. The reissue oath/declaration filed 11/07/08 in this application is defective because the error which is relied upon to support the reissue application is not specific to what the error in the claims was in the original patent. MPEP § 1414 II (C) states: "Any error in the claims must be identified by reference to the specific claim(s) and the specific languages where lies the error". The error statement "an optical disk having a "clock reference structure having a spatial frequency that is within the spatial frequency spectrum of the data" was not claimed" provided in the oath/declaration filed 11/07/08 fails to identify the specific claim. Accordingly, the oath/declaration filed 11/07/08 is defective.
2. Claims 38-109 are rejected as being based upon a defective reissue oath/declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.
3. The nature of the defect(s) in the oath/declaration is set forth in the discussion above in this Office action.

***Amendment to Specification/claims***

4. The amendment filed 11/07/08 to correct information in the specification and claim 21 is improper because the amended/deleted information were in a certification of correction in the original patent given on 10/26/04. The amended information in column 14, line 5 of the specification and in claim 21 are considered as original information. Therefore, it is improper to underline and/or bracket the amended/deleted information in the filed amendment.

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The amendment filed 11/07/08 is hereby objected for the reasons set forth in the discussion above.

***Art Consideration***

5. None of the prior art of record, alone or in combination, suggests or fairly teaches a combination of all of limitations particularly recited in each of claims 1, 10, 24, 35-38, 48, 57, 64, 81, 88, and 95-99. Therefore, claims 1, 10, 24, 35-38, 48, 57, 64, 81, 88, and 95-99 and their respectively dependent claims 2-9, 23-34, 39-47, 49-56, 58-63, 65-80, 82-87, 89-94, and 100-109 would be allowable if a proper oath/declaration and a proper amendment are timely filed to overcome the rejection under 35 U.S.C. 251 and the amendment/claim objections as set forth above.

***Information Disclosure Statement***

6. The information disclosure statement filed 05/20/09 has been received. All Office actions cited in form PTO/SB/08a have been considered by the examiner, but the cited Office actions have been crossed out from the form because these Office actions are not the proper publication to be listed in form PTO/SB/08a.

***Response to Arguments***

7. Applicant's arguments with respect to claimed invention have been considered but are moot in view of the new ground(s) of rejection.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thang V. Tran whose telephone number is (571) 272-7595. The examiner can normally be reached on M-F 9:00AM-5:30PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Feild can be reached on (571) 272-4090. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Thang V. Tran/  
Primary Examiner  
Art Unit 2627